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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/706,327	11/12/2003	Charles D. Lennox	MED03-11	6437
75	90 02/16/2005		EXAM	INER
Barry W. Chapin, Esq.			JOHNSON III, HENRY M	
CHAPIN & HUANG, L.L.C. Westborough Office Park			ART UNIT	PAPER NUMBER
1700 West Park Drive			3739	
Westborough, MA 01581			DATE MAIL ED: 02/16/2005	

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Edamentor from may be available under the processor of 3 CPR 1.136(s). In an event, however, may a reply be timely filed Edamentor from may be available under the processor of 3 CPR 1.136(s). In an event, however, may a reply be timely filed If the period for reply specified above is less than thin't (30 days, a reply visinin the statutory minimum of thin't (30 days, will be considered timely. If the period for reply specified above is less than thin't (30 days, a reply visinin the statutory minimum of the mailing date of this communication. Palaries to reply visitin the set or extended period for reply visit, by a statute, cause the application to become ARANDONED (35 U.S. 5, 13.5). Responsive to communication(s) filed on 31 January 2005. Status 1) Responsive to communication (s) filed on 31 January 2005. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-56 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are objected to. 8) Claim(s) is/are objected to by the Examiner. 9) The specification is objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to See 37 CFR 1.185(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to See 37 CFR 1.121(d). 11) The oath or declar		Application No.	Applicant(s)					
Henry M Johnson, III 3739	Office Action Summers		LENNOX ET AL.					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ± MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Examinate of time may be available under the provision of 3 CFR 1.13(a). In no event, however, may a reply be limely filed Examinated for reply specified above is less hash thirty (20) days, a reply while the studency minimum of thirty (20) days will be considered limely. If the period for reply specified above is less hash thirty (20) days, a reply while the studency minimum of the mailing date of this communication of reply is specified above. The maximum distulary period will apply and will apply 5 (50) (MONTHS from the mailing date of this communication of reply is specified above. The maximum date of the communication of the communication. Part of the communication of the communication. Part of the communication of the c	Oπice Action Summary	Examiner	Art Unit					
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Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Claims 1-40 and 43-56, drawn to thermal body applicators, classified in class
 607, subclass 096

II. Claims 41-43, drawn to medical methods, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus may be used for heating processes by altering the circulating fluid.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

If group I is elected, a species election is also required.

Group I contains claims directed to the following patentably distinct species of the claimed invention:

Species 1 as shown by embodiment 1 in Figures 3 & 4.

Species 2 as shown by embodiment 2 in Figures 13 & 14.

Species 3 as shown by embodiment 3 in Figure 16.

Species 4 as shown by embodiment 4 in Figure 17.

Species 5 as shown by embodiment 5 in Figure 18.

Species 6 as shown by embodiment 6 in Figure 19.

Species 7 as shown by embodiment 7 in Figure 20.

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Species 8 as shown by embodiment 8 in Figure 21.

Species 9 as shown by embodiment 9 in Figure 23.

Species 10 as shown by embodiment 10 in Figure 26.

Species 11 as shown by embodiment 11 in Figures 29 & 30.

Species 12 as shown by embodiment 12 in Figure 32.

Species 13 as shown by embodiment 13 in Figure 39.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

It is noted that several variants of a non-cap shaped tissue cooling device are disclosed.

If any claim is identified with the elected species that includes such a configuration (i.e. claim 26), additional election may be required.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Henry M. Johnson, III

Patent Examiner